



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Anu Natarajan, Vice Mayor
Bob Wieckowski
Bill Harrison
Suzanne Lee Chan

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Melissa Stevenson Dile, Deputy City Manager

Dawn G. Abrahamson, City Clerk
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Daren Fields, Economic Dev. Director
Mary Kaye Fisher, Interim Human Resources Dir.
Annabell Holland, Parks & Recreation Dir.
Norm Hughes, City Engineer
Jill Keimach, Community Dev. Director
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

**NOTICE AND AGENDA OF SPECIAL MEETING
CLOSED SESSION**

FREMONT CITY COUNCIL

DATE: Tuesday, November 3, 2009

TIME: 6:15 p.m.

LOCATION: Fremont Room, 3300 Capitol Avenue, Fremont

The Council will convene a special meeting. It is anticipated the Council will immediately adjourn the meeting to a closed session to confer with and receive advice from its attorney regarding granting authority to its real property negotiators regarding price and terms of payment, as follows:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding:

Owner	Street Address	APN	Total Sq. Ft.
Mission Court Properties	440-1055 Mission Court, Fremont, CA 94539	519-0850-008-06	5,447
East Warren Park, LLC	47003 Mission Falls Ct., Fremont, CA 94539	519-1691-008-00	30,113
East Warren Park, LLC	Mission Falls Lane, Fremont, CA 94539	519-1691-007	12,630
RAPS Fremont, LLC	47301 Kato Road, Fremont, CA 94538	519-1680-027-05	395

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding:

Owner	Address	APN #	Total Sq. Ft.
Bedford Property Investors, Inc., and LBA Realty Fund II - WBP II LLC.	48850 Kato Road 48790 Milmont Drive	519-1010-078-03; 519-1010-080-01	53,847; 2,868

Kato Associates	48815 – 48819 Kato Road	519-1010-011-29	49,453
Warm Springs Owners' Association	Lot C of Tract 7693	519-1731-003-00	1,341
Robson Homes	48835 Kato Road	519-1738-003-00; 519-1738-135-00; 519-1738-023-00; 519-1738-004-00; 519-1738-131-00; 519-1738-132-00; 519-1738-133-00; 519-1738-134-00	15,581 875 75 110 1,171 797 704 963
Castilleja Owners Association	48835 Kato Road	519-1738-001-00	5,437

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the City are—(Which will be represented at the meeting) Randy Sabado, Real Property Manager; Jim Pierson, Transportation and Operations Director and Harvey Levine, City Attorney.

This Special Meeting is being called by Mayor Wasserman.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
NOVEMBER 3, 2009
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – None.*
- 2.3 *Second Reading and Adoption of an Ordinance of the City of Fremont Amending Fremont Municipal Code Title IV, Chapter 6 Regarding Smoking in Outdoor Dining Areas*

RECOMMENDATION: Adopt ordinance.

- 2.4 **CHANGE IN PAVEMENT CONDITION INDEX STANDARD**
Consideration of Change in Pavement Condition Index Standard for Use with the Modified Approach to Accounting for the City's Infrastructure

Contact Person:

<i>Name:</i>	<i>Tish Saini</i>	<i>Harriet Commons</i>
<i>Title:</i>	<i>Accountant</i>	<i>Director</i>
<i>Dept.:</i>	<i>Finance</i>	<i>Finance</i>
<i>Phone:</i>	<i>510-494-4606</i>	<i>510-284-4010</i>
<i>E-Mail:</i>	<i>tsaini@fremont.gov</i>	<i>hcommons@fremont.gov</i>

RECOMMENDATION:

- 1. Reaffirm the use of the modified approach for the City's streets and roads infrastructure network.*
- 2. Establish a revised range of acceptable condition standards to be "fair" as measured by the City's pavement management system condition assessment index of between 50 and 69 for the City's streets and roads infrastructure network.*

3. CEREMONIAL ITEMS – None.

4. PUBLIC COMMUNICATIONS

4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – None.

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS – None.

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS

7.1 EMINENT DOMAIN HEARING – WARREN AVENUE GRADE SEPARATION PROJECT (PWC8074)

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Properties located at 440-1055 Mission Court, 47003 Mission Falls Court and the west side of Mission Falls Lane, and 47301 Kato Road. All property rights required are needed for the Mission Boulevard Widening Project, and the Warren Avenue Grade Separation Project

Contact Person:

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Community Development	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

RECOMMENDATION:

1. Conduct a hearing
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity requires the acquisitions of the subject properties, and authorize the commencement of eminent domain proceedings.

7.2 EMINENT DOMAIN HEARING - KATO ROAD GRADE SEPARATION PROJECT, (PWC 8697)

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Properties Located at 48850 Kato Road, 48790 Milmont Drive, 48815-48819 Kato Road, 48835 Kato Road, and Lot C of Tract 7693 for the Kato Road Grade Separation Project

Contact Person:

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Community Development	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

RECOMMENDATION:

1. Conduct a hearing
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity requires the acquisitions of the subject properties, and authorize the commencement of eminent domain proceedings.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals

8.1.1 MAYOR WASSERMAN REFERRAL: Appointment of Denise Churchill to the Senior Citizens Commission

Appointment:

<i>Advisory Body</i>	<i>Appointee</i>	<i>Term Expires</i>
Senior Citizens Commission	Denise Churchill	December 31, 2011

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING

NOVEMBER 3, 2009

***2.3 Second Reading and Adoption of an Ordinance of the City of Fremont Amending Fremont Municipal Code Title IV, Chapter 6 Regarding Smoking in Outdoor Dining Areas**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

***2.4 CHANGE IN PAVEMENT CONDITION INDEX STANDARD**

Consideration of Change in Pavement Condition Index Standard for Use with the Modified Approach to Accounting for the City's Infrastructure

Contact Person:

Name:	Tish Saini	Harriet Commons
Title:	Accountant	Director
Dept.:	Finance	Finance
Phone:	510-494-4606	510-284-4010
E-Mail:	tsaini@fremont.gov	hcommons@fremont.gov

Executive Summary: At the time the City implemented GASB Statement No. 34 in FY 2001/02, Council adopted use of the “modified approach” for the accounting of streets and roads infrastructure, and a pavement condition index (PCI) range of “good” (70-85, on a scale of 1-100). The City had been able to maintain a PCI of at least 70 until FY 2006/07. For FY 2008/09, the PCI has fallen to 64. The two options are to change from the “modified approach” to the “basic approach” and begin to depreciate the City's streets and roads, or continue using the “modified approach” and change the PCI standard. Staff recommends the Council reaffirm use of the “modified approach” for the City's streets and roads network of infrastructure, and change the PCI standard to “fair” (50-69), in recognition of the ongoing challenging budget and economic conditions that have decreased the amount of resources available for street maintenance.

BACKGROUND: The Governmental Accounting Standards Board (GASB) is the body that sets accounting and financial reporting standards for governments in the United States. In FY 2001/02, the City implemented GASB Statement No. 34, which was the most significant change to governmental accounting rules in the last 40 years. Among other things, the GASB developed two approaches for infrastructure accounting in GASB Statement No. 34. The first is to capitalize infrastructure assets on the balance sheet, establish useful lives for the assets, and then depreciate them over their useful lives. The second, called the modified approach, was designed to address the situation of assets that are maintained by a government at a certain condition level and not allowed to deteriorate. In such situations, depreciation accounting would be misleading and imply that the assets are being used up.

As part of the implementation of GASB Statement No. 34, each government had to make decisions regarding which assets to depreciate and which, if any, to account for using the modified approach. Staff identified several separate infrastructure asset networks and the Council, at its meeting on September 10, 2002, approved the use of depreciation accounting for most of those networks (sidewalks, street and outdoor lighting, boat ramps, irrigation systems, waterways, traffic signals, signage, parking areas, and storm drains). However, for one network, streets and roads, the Council approved the use of the modified approach. The modified approach maintains the original value of the asset on the financial statements, with no depreciation. However, there is a set of requirements that governments must meet in order to be allowed to use this method. Those requirements are as follows:

- Prepare and maintain an up-to-date inventory of assets.
- Perform or obtain condition assessments of those assets no less than every three years and summarize the results using an objective condition measurement scale.

- Set a minimum condition standard and disclose it.
- Make an annual estimate of the amount needed to maintain and preserve those assets at that standard.
- Document that infrastructure assets are being preserved at or above the condition level established and disclosed by the government.
- Report in its annual financial statements: (1) the results of the three most recently completed condition assessments; (2) the estimates of the amounts needed to maintain or preserve the assets at the level established by the government; and (3) the actual amount of expense for each of the past five years.

The condition standard may be changed from year to year. If an organization does not meet all of these six requirements, it must revert to depreciation accounting. In that event, an accumulated depreciation amount would be calculated and recorded and net assets of the organization would be reduced accordingly.

Each government has the ability to set its condition standard based on criteria that it finds most appropriate. Because street work is done on a cyclical basis, the condition index is a representation of the condition of the City's overall streets and roads network. While some individual segments of streets that have recently been resurfaced will have a higher index rating, and those in need of maintenance will have a lower index rating, the standard represents the overall condition of the City's streets and roads network. On September 10, 2002, the Council established a range of acceptable condition standards to be "good," as measured by the City's pavement management system condition index (PCI) of 70-85.

At the time this standard was adopted, the City's roads and streets had a PCI of 79 (out of a possible 100). That was due to a significant one-time investment in street maintenance. The Capital Improvement Program at that time had planned allocations of \$19.6 million over the ensuing five years, which would have enabled the City to maintain an average PCI of 74. The staff report recommending adoption of the modified approach contained a caution: "(I)f the modified approach is selected, it should be with the understanding that in the event there is a major change in the City's economic condition, this policy should be reviewed."

And that, in fact, is what has happened. Following the implementation of GASB Statement No. 34 (and adoption of the modified approach for the City's streets and roads), the City, along with the rest of the State and the nation, was hit first by the "dot-com" bust in the early years of this decade, followed by an even more severe recession now. The City has been challenged to balance the use of resources to support operations, as well as maintain its infrastructure. Both operations, particularly public safety, and infrastructure maintenance continue to be Council priorities, and yet both, along with the rest of the organization, have been subject to budget reductions. As a result, the PCI first fell below 70 in FY 2006/07, and it has been declining since then.

DISCUSSION/ANALYSIS: The PCI for the City's streets and roads has been declining for several years, but it did not drop below the Council-adopted PCI minimum until FY 2006/07. For FY 2008/09, the PCI has fallen to 64. Other cities are finding themselves in the same situation because of declining gas tax and other street maintenance revenue, and because maintenance costs, particularly the cost of asphalt, have been increasing.

The two options available to the Council are to change from the modified approach to depreciation accounting for the City's streets and roads, or to adopt a lower PCI standard. The PCI ranges are as follows:

<u>Condition</u>	<u>PCI Range</u>
Excellent	86-100
Good	70-85
Fair	50-69
Poor	25-49
Very Poor	< 25

Although the condition of the City's streets and roads is no longer in accordance with the Council's adopted standard, staff continues to believe that use of the modified approach is the better way to reflect in the City's financial statements the manner in which the City's roads and streets are actually being managed. Streets and roads represent a significant investment, which the City maintains to the best of its ability. To depreciate those assets could be misleading because their value would be slowly erased from the City's financial statements. In addition, converting to depreciation accounting would require additional staff effort with, in staff's opinion, no corresponding additional benefit to be derived from that effort.

The American Public Works Association (APWA) endorses the modified approach over depreciation accounting. They indicate in their GASB 34 policy statement that historical cost and depreciation are "well accepted" and "easily adopted." Nevertheless, they indicate that they are likewise "a poor and often misleading representation of the actual value and ownership costs of a community's infrastructure." Their policy statement goes on to say, "Depreciation charges based on conventional accounting methods in no way reflect the actual wear and deterioration of public works facilities that result from day-to-day use or the influence that routine repair and upgrading operations can have on asset condition."

FY 2006/07 was the first year in which the City's PCI fell below 70. Previously estimated annual amounts required to maintain and preserve City streets at the current PCI standard compared to the actual expenditures for street maintenance and actual PCI levels for the last three years is shown below:

<u>Fiscal Year</u>	<u>Maintenance Estimate</u>	<u>Actual Expenditures</u>	<u>Overall PCI</u>
2006/07	\$10,800,000	\$5,200,000	68
2007/08	12,000,000	5,800,000	67
2008/09	12,000,000	5,900,000	64

Staff currently estimates that \$15,500,000 will be needed annually to maintain the City's streets and roads at an average PCI of 64. The change in the PCI between 2007/08 and 2008/09, and the increase in the amount needed to maintain the current PCI, is due to two things:

1. The current inspection of City residential streets was completed in June 2009. The previous inspection of City residential streets took place in 2004. Between then and now, the deterioration of residential streets has accelerated due to the further aging and failure of older maintenance treatments, such as slurry seals, revealing the defects in structure of the underlying streets.
2. Preventative maintenance of residential streets continues to be deferred on a year-to-year basis due to the higher priority for arterials and collector streets, which receive a higher volume of traffic at higher speeds and present a greater liability to the City. Because residential streets comprise the majority of the streets in Fremont, accounting for nearly 45% of the total street network, the overall PCI is adversely affected by this deferred maintenance.

The recently adopted Capital Improvement Program (CIP) for FY 2009/10 – 2013/14 includes \$21 million for street maintenance project. In addition, the City has received \$6.5 million in State Proposition 1B funds (\$3.4 million in FY 2007/08 and \$3.1 million in FY 2008/09), and \$5.9 million in federal economic stimulus (from the American Recovery and Reinvestment Act of 2009 – ARRA), all of which is being used for street maintenance. Even with this additional infusion of State and federal funds, staff believes it is unlikely the City's streets and roads will achieve a PCI of 70 in the near future. Accordingly, staff is proposing a change in the City's PCI standard to "fair" (a PCI between 50 and 69), in recognition of the ongoing budget challenges and economic conditions that have decreased the amount of resources available for street maintenance. Staff continues to be on the lookout for street maintenance funding opportunities, recognizing the importance of maintaining the City's significant investment in its infrastructure.

FISCAL IMPACT: None.

ENVIRONMENTAL REVIEW: Not applicable.

ENCLOSURE: None

RECOMMENDATION:

1. Reaffirm the use of the modified approach for the City's streets and roads infrastructure network.
2. Establish a revised range of acceptable condition standards to be "fair" as measured by the City's pavement management system condition assessment index of between 50 and 69 for the City's streets and roads infrastructure network.

6.1 Report Out from Closed Session of Any Final Action

7.1 EMINENT DOMAIN HEARING – WARREN AVENUE GRADE SEPARATION PROJECT (PWC8074)

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Properties located at 440-1055 Mission Court, 47003 Mission Falls Court and the west side of Mission Falls Lane, and 47301 Kato Road. All property rights required are needed for the Mission Boulevard Widening Project, and the Warren Avenue Grade Separation Project

Contact Person:

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Community Development	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

Executive Summary: The purpose of this report is to recommend that the Council adopt a Resolution of Necessity authorizing the filing of eminent domain actions for the properties located at 440-1055 Mission Court, 47003 Mission Falls Court and the west side of Mission Falls Lane, and 47301 Kato Road, which are needed for the Mission Boulevard Widening Project, and the Warren Avenue Grade Separation Project (PWC8074).

BACKGROUND: The I-880/Mission Boulevard (Route 262) Interchange Reconstruction Project has been a joint project of the City of Fremont, Alameda County Transportation Authority and CalTrans. This project will provide a critical link to I-880 connecting commercial areas in the City, and improving traffic flow by separating local streets, regional traffic, and mass transportation movements.

The project is divided into three phases. Phase 1A included the widening of I-880 between the Interchange and Dixon Landing Road, all of the ramps to and from Mission Boulevard and I-880, and the extension of East Warren Avenue over I-880 to connect to West Warren Avenue. This phase was completed in June 2009.

Phase 1B includes the widening of Mission Boulevard between I-880 and Warm Springs Boulevard, as well as the replacement of ramps at Mission and Kato Road that were removed as part of Phase 1A. Phase 2 is a grade separation project that will depress Warren Avenue under two Union Pacific Railroad (UPRR) tracks between Kato Road and Warm Springs Boulevard immediately adjacent to, and south of, Mission Boulevard. The eastern UPRR track is now owned by the Santa Clara Valley Transportation Authority (VTA) and the corridor will be used for the Silicon Valley Rapid Transit (BART) project. The third element of work, needed by VTA, involves modifying truck access and freight access to a private truck rail materials transfer business currently located on VTA and UPRR property within the right-of-way.

The Warren Avenue Grade Separation, the relocation of freight facilities, and the widening of Mission Boulevard are tied together by the UPRR track realignment required for each project and, therefore, the three must be closely coordinated and designed by a single entity.

The three projects are collectively known as the Mission/Warren/Truck-Rail or MWT project. There are now four agencies involved in the MWT Project: CalTrans, ACTA, the City and VTA. Based on agreements between these agencies, VTA is the project manager of the MWT Project, and manages the final design, right-of-way acquisition, utility relocation, and construction efforts. The City is the lead agency in the right-of-way acquisition for both Phase 1B (ACTA/CalTrans Mission Boulevard Widening Project), and Phase 2 (the City's Warren Grade Separation Project).

Phases 1B and 2 require property and property interests from eight private property owners, in addition to a variety of parcels from public property owners such as VTA, UPRR, and Alameda County Flood Control and Water Conservation District. The City has not been able to reach an agreement with five of the private property owners, and with this report is seeking approval of the adoption of a Resolution of Necessity to acquire the necessary property and property interests from three of these owners. Staff will return on November 17, 2009 with a request to adopt a resolution of necessity on the remaining two properties.

DISCUSSION/ANALYSIS: Staffs from ACTA, VTA, CalTrans and the City have entered into a Memorandum of Understanding to document the roles, responsibilities, costs and funding for the MWT Program. The MOU is consistent with all prior funding agreements for the project and calls for the City to contribute \$23.659 million to the MWT Project. This funding is made up of \$14 million of Redevelopment funds previously committed to Phases 1B and 2 of the I-880/Mission Interchange, and \$9.659 million of City savings from Phase 1A of the Interchange. In addition, the City has committed \$5 million from the "Bridge Benefit District" account, "Fund 188", as the City's future construction contingency should project costs increase.

Although the MWT project is fully funded, VTA and Fremont are the only two agencies with funding currently available for right-of-way acquisition and utility relocation, with the exception of \$2.3 million of CalTrans utility cost savings from Phase 1A. All other funding to be contributed by CalTrans and ACTA are future State funds that will be used for construction. The major portion of this future funding is from the East-West Connector project moving forward, allowing \$42.35 million in Route 84 excess land sale proceeds to be allocated to the MWT project. The City has entered into a Right-of-Way Acquisition and Utility Relocation Funding Agreement with VTA and ACTA to provide its share of the costs of these phases for the MWT project. Based upon this agreement, the City's contribution will not exceed \$10,313,476 without a written amendment to the agreement.

Pursuant to the agreements between the parties, VTA is managing the overall right-of-way acquisition effort, and Fremont is assisting VTA with these duties. Fremont Real Property staff will be the lead on most of the right-of-way acquisition for the Warren Avenue Grade Separation and Mission Boulevard Widening components. VTA will lead the property acquisition efforts with UPRR for all project components. All Fremont costs, including staff, consultants and legal costs will be billed to VTA and reimbursed from the project budget. VTA will manage all aspects of the utility relocation efforts. The City will issue letters to all affected utility companies located within the City's Warren Avenue right-of-way directing them to relocate.

On June 9, 2009, the City Council authorized staff to make offers based upon the approved appraised values to the eight private property owners. The formal offers to purchase the needed right-of-way were

transmitted to the property owners in June and July 2009, and seven offer packets for UPRR were given to VTA to transmit to UPRR.

Negotiations have been ongoing with the private property owners and their representatives, but mutually acceptable agreements have not been reached with five property owners. Discussions will continue with all owners in hopes of negotiating agreements; however, to meet the current construction schedule of fall 2010, the City Council must adopt a Resolution of Necessity to acquire the necessary right-of-way.

THE SUBJECT PROPERTIES: On June 23, 2009 and July 21, 2009, the City's formal written offers to purchase the properties were transmitted to the eight private property owners. Negotiations have been ongoing with the private property owners and their representatives, but a mutually acceptable agreement has not been reached. To secure the right-of-way necessary to meet the project construction schedule, staff requests that the City Council consider the adoption of a Resolution of Necessity authorizing the commencement of eminent domain proceedings for the subject properties.

The properties that are the subject of this proposed Resolution of Necessity are as follows:

1. **Mission Court Properties, Inc.** – This property is located at 440 through 1055 Mission Court Fremont, CA 94539 – Assessor Parcel Number 519-0850-008-06. The property is owned by Mission Court Properties, Inc. The property consists of a 19.21-acre site improved with six (6) R&D/Industrial buildings totaling approximately 317,464 s.f. built in 1986. Two (2) parcels are required for the project; a small 1,036 s.f. fee area is required for retaining wall reinforcement, and a 4,411 s.f. temporary construction easement for construction activities. Acquisitions are from the southwest area of the site, in the parking lot and landscaped setback. The impacted area is improved with asphalt and striped parking. Nominal landscape improvements are impacted, and will be replaced as part of the project, as shown in the attached Exhibit "A".
2. **East Warren Park, LLC** – This property is located at 47003 Warm Springs Boulevard, and consists of a 3.8 acre parcel with one R&D building that has an area of approximately 62,382 sf. This owner also owns an adjacent vacant parcel of land on the west side of Mission Falls Court that contains 5.23 acres of land. The properties have Assessors Parcel Numbers; 519-1691-008 and 519-1691-007. The proposed easement interests required from the developed parcel is a 14,729 s.f. public service easement for temporary tiebacks to be used during the construction of a Deep Soil Mix (DSM) wall and relocation of communication and electrical lines, a 14,012 s.f. temporary construction easement for construction purposes along Warren Avenue, a 260.87 l.f. restricted access easement for restricting access onto Warren Avenue, and a 383 s.f. storm drain easement to connect to existing facilities. The impacted area is improved with landscaping, striped parking and one driveway access, as shown on the attached Exhibit "B". In the before condition, the subject property has one driveway along Warren Avenue and two driveways along Mission Falls Court. In the after condition, the driveway along Warren Avenue will be eliminated and landscaping and other site improvements will be replaced as part of the project. The proposed easement interest required from the vacant land parcel is a 12,630 s.f. ingress and egress easement for the purpose of providing access to the adjacent UPRR property and emergency vehicle access, as shown on the attached Exhibit "C."

3. **RAPS Fremont, LLC** – This property is located at 47301 Kato Road, Assessors Parcel Number 519-1680-027-05. The property is owned by RAPS Fremont, LLC and consists of a 2.32 acre parcel improved with a Holiday Inn Express. The proposed acquisition is a 395 s.f. landscape easement (LE). The impacted area is improved with tress and shrubs. The LE is needed to maintain landscaping at a low-enough height to enable a safe line-of-sight view through this portion of the property for trucks on Kato Road. The area to be encumbered with the LE is already the site’s required landscaping area, along Kato Road frontage as shown on the attached Exhibit “D.”

THE PROPOSED RESOLUTION OF NECESSITY: Council adoption of a Resolution of Necessity, by four-fifths vote with the following findings, based on the evidence noted below, is required for the initiation of the proposed eminent domain action:

1. **The public interest and necessity require the proposed project.** The need and necessity of the proposed project is consistent with the City’s long term General Plan. Traffic study findings conducted prior to design of the project, support the Grade Separation project. A significant amount of traffic utilizes Warren Avenue to access Mission Boulevard and I-880, and with the completion of Phase 1A of the project, Warren Avenue is now a key connector between the east and west sides of I-880.

With the existing at grade crossing, train traffic frequently blocks vehicular traffic, causing significant congestion along Warren Avenue and Kato Road. The project as proposed will eliminate the existing at grade railroad/street crossing at Warren Avenue. Train blocking and crossing closures due to train traffic will therefore be avoided. The project will result in improved traffic flow on Warren Avenue, Kato Road and nearby cross-streets, and alleviate traffic congestion in the City.

2. **The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.** City staff has been studying and working with VTA, CalTrans and ACTA on alternative designs for the Warren Avenue Grade Separation project. A matrix of alternative design configurations for the Grade Separation of the Warren Avenue portion of the project was considered, including a railroad overpass or underpass. One such alternative considered leaving the street at-grade and depressing the railroad tracks as a design alternative. However, this alternative is not viable. Union Pacific railroad (UPRR) does not support this alternative, and the City has no authority to force UPRR to agree to depressed rails. Even if UPRR were to agree to the depressed rail alternative, the future BART extension tracks would also have to be depressed and the cost of clearance and operational requirements would have significant impacts to the City’s operating right-of-way. The project as planned will thus be a benefit to the residents of the City and the region as a whole, while impacting only eight private property owners.
3. **The property described in the resolution of necessity is necessary for the proposed project.** As noted, numerous alternatives for the project were studied, and it was determined that the project as planned provided the greatest benefit to the residents of the City and the region as a whole. The noted acquisitions are necessary for the project as planned. The City is required by

State law to conform the parcels back to the best functional utility so that the property owners are not left with a landlocked or limited parcel.

- 4. The offer required by Government Code Section 7267.2 has been made to all owners of record.** Staff made the required written offers to all owners of record based on approved appraisals of the fair market value of the property and property interests necessary for the project on June 23, 2009 and July 21, 2009. The offers included a written statement containing detail sufficient to indicate the basis for the offer as required by Government Code Section 7267.2, and an informational pamphlet setting out the eminent domain process and the property owners' rights. Written Notices of the City's Intent to Pass a Resolution of Necessity, setting forth the date, time and location of the City Council meeting to consider adopting a Resolution of Necessity, were mailed to all owners of record on September 18, 2009.

FISCAL IMPACT: As noted in the Background section of this report, the City has entered into a Right-of-Way Acquisition and Utility Relocation Funding Agreement with VTA and ACTA to provide its share of the costs of these phases for the Mission I-880/Warren Grade Separation and Truck Rail Relocation (MWT) project. Based upon this agreement, the City's contribution will not exceed \$10,313,476 without a written amendment to the agreement.

ENVIRONMENTAL REVIEW: The Warren Grade Separation project is statutorily exempt from the California Environmental Quality Act because it will eliminate existing railroad grade crossings. A Notice of Exemption for the project was filed by the City with the Alameda County Clerk on July 3, 2002. Staff recommends that the City Council adopt the proposed Resolution of Necessity based on the above findings and information.

A Finding of No Significant Impact (FONSI) under the National Environmental Policy Act (NEPA) and Negative Declaration (ND) under the California Environmental Quality Act (CEQA) were prepared and approved for the Route 262/Warren Avenue/I-880 Interchange Reconstruction and I-880 Widening Project. The FONSI was approved by FHWA on 1/16/02 and the ND was approved by CalTrans on 1/3/02.

In addition to the improvements on I-880, the environmental document included construction on Route 262 (Mission Boulevard) from Route 880 to Warm Springs Boulevard. The work identified included removal of the two rail bridges and replacing with a single bridge, widening Route 262, and relocating ramps on Route 262.

ENCLOSURES:

- [Draft Resolution](#)
- [Location Map](#)
- [Aerial photographs with Right-of-Way Acquisition Areas \(Exhibits A-D\)](#)

RECOMMENDATION:

1. Conduct a hearing
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity requires the acquisitions of the subject properties, and authorize the commencement of eminent domain proceedings.

7.2 EMINENT DOMAIN HEARING - KATO ROAD GRADE SEPARATION PROJECT, (PWC 8697)

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Properties Located at 48850 Kato Road, 48790 Milmont Drive, 48815-48819 Kato Road, 48835 Kato Road, and Lot C of Tract 7693 for the Kato Road Grade Separation Project

Contact Person:

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Community Development	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

Executive Summary: The purpose of this report is to recommend that the Council adopt a Resolution of Necessity authorizing the filing of eminent domain actions to acquire property and property interests from four privately owned properties located at 48850 Kato Road, 48790 Milmont Drive, 48815-48819 Kato Road, 48835 Kato Road, and Lot C of Tract 7693 of the Montebello subdivision for the Kato Road Grade Separation between Warm Springs Boulevard and Milmont Drive.

BACKGROUND: In 2002, the Santa Clara Valley Transportation Authority (VTA) acquired right-of-way from the Union Pacific Railroad spanning from north of Paseo Padre Parkway in Fremont to beyond Alum Rock Road in San Jose. Securing this vital space allows for a future mass transit system (BART) to be built alongside the remaining railroad tracks, from Warm Springs in Fremont into the cities of Milpitas and North San Jose. To transform this very important transportation corridor, a grade separation is planned where Kato Road crosses the railroad tracks and VTA's future transit corridor in Fremont.

The proposed project is to construct a grade separation of the Union Pacific Railroad (UPRR) at-grade crossing on Kato Road between Warm Springs Boulevard and Milmont Drive in the Warm Springs District for the future VTA Rapid Transit extension to Santa Clara County. This separation is created by lowering Kato Road, so that it passes beneath the current ground/street level railroad tracks to separate the freight/transit and cars/pedestrians traffic. The current schedule provides for construction to begin in 2010.

VTA, in partnership with the City of Fremont, is the implementing agency responsible for the design and construction of the \$40.2 million Kato Road Grade Separation Project (Project). VTA funds approximately \$30.2 million of the project, with the remainder to be funded with a future grant of \$10 million from the State Proposition 1B Highway-Railroad Crossing Safety Account (HRCSA). The ability for the project to receive these grant funds is dependant on gaining possession of the needed right-of-way by early next year so that the construction contract can be awarded by mid-2010 per the grant requirements. To help secure this grant, the City will assist VTA by helping to acquire the needed right of way for the project. Seventeen properties with eight owners will be impacted, including VTA, UPRR, three commercial properties, one residential subdivision, and two Home Owners Associations.

DISCUSSION/ANALYSIS: The proposed project is to prepare Kato Road for VTA's future Rapid Transit (BART) extension from Fremont to San Jose. The completed project will separate the UPRR freight tracks from Kato Road traffic. This project will construct a new two-span double-track railroad bridge structure, and depress Kato Road under the railroad tracks. The bridge structure will be designed at the UPRR's standards, with a minimum 50-year life span, and the intent of the project is that it will be maintained by UPRR. The depressed roadway will be built to City of Fremont standards, and Fremont will own and maintain the roadway.

The scope of work associated with the improvements at the Kato Road crossing include horizontal and vertical modifications, a pump station, drainage design, utility relocations and potential existing utility modifications, stage construction and traffic handling, retaining walls, Deep Soil Mix (DSM) walls, construction area signs, pavement delineation and signing, and right of way acquisition.

After the project is complete, the City and the areas surrounding the project will benefit from reduced traffic back-ups due to trains crossing Kato Road, decreased idling vehicle emissions and commute times, absence of noise from train bells and whistles at the Kato intersection, and improved pedestrian safety and access across the railroad tracks. The region as a whole will benefit in the future from a new mass transportation corridor.

The project will require rights of way from six private property owners, plus VTA and Union Pacific Railroad (UPRR). These acquisitions include two partial fee acquisitions, eight public utility easements, two ingress and egress easements, six sanitary sewer easements, two storm drain easements, fifteen temporary tieback easements, fourteen temporary construction easements (TCE), and three temporary emergency vehicle access easements within the TCE areas.

On June 23, 2009, the Council gave authorization to staff to make offers, based on the approved appraised values, to the six private property owners and UPRR. The formal written offers to purchase the needed right-of-way were transmitted to the property owners in late July 2009. The offer to UPRR was given to VTA to transmit to UPRR, because VTA is currently in discussions with UPRR regarding the Mission/Warren/Truck Rail Relocation Project and the agencies decided it was more efficient for all discussions with UPRR to go through VTA.

Negotiations have been ongoing with the property owners and their representatives, but to date the City has not been able to reach acquisition agreements with most of the property owners. Robson Homes and Warm Springs Owners Association have granted Property Entry Agreements to the City and VTA, which allow the construction of the advanced utility and storm drain relocation work at the two subdivisions adjacent to the transportation corridor. Advancing this relocation work will significantly reduce the impacts of the project on the construction of new homes in the subdivisions, since the utility and storm drain work is expected to be finished by the end of October 2009. Nonetheless, the Property Entry Agreement with Robson Homes does not cover other property interests needed for other parts of the project.

Discussions will continue with all owners in hopes of negotiating mutually acceptable settlement agreements. However, to meet the construction contract award schedule of mid-2010, the City Council must adopt a Resolution of Necessity to acquire the necessary right-of-way.

THE SUBJECT PROPERTIES FOR THE NOVEMBER 3, 2009 RESOLUTION: The properties that are the subject of this proposed Resolution of Necessity are as follows:

1. **48850 Kato Road and 48790 Milmont Drive (Bedford Property Investors/LBA Realty Fund II)** - The two properties are located at the northwest quadrant of Kato Road and Milmont Drive. Although two separate legal parcels, these properties are adjacent to one another. Together with a third adjacent parcel under the same ownership, these properties made up a campus of five R&D buildings with approximately 146,546 square feet of floor space. The project requires the following interests: a fee acquisition of $\pm 1,548$ square feet is needed for Deep Soil Mix (DSM) wall; two public utility easements ($\pm 5,402$ and ± 573 square feet) for the relocation of communication and electric lines; a $\pm 15,150$ square foot temporary tieback easement to be used during the construction of the DSM wall; a ± 393 square foot sanitary sewer easement for connecting to the existing line; two temporary construction easements ($\pm 26,603$ and $\pm 2,295$ square feet) for the construction activities, and a $\pm 4,751$ square foot temporary emergency vehicle access easement for use during construction from the subject property. These areas are shown on the attached Exhibits A-1 & A-2. The impacted area is currently improved with one driveway, mature trees, landscape items, and parking spaces. The depression of Kato Road along the frontage of these properties will require that the project relocate the existing Kato Road driveway to a more westerly location.
2. **48815 – 48819 Kato Road (Kato Associates)** - This property is located at the southwest quadrant of the project area. It measures 4.43 acres improved with a 76,668 square foot warehouse building. The project requires the following interests: a fee acquisition of $\pm 1,731$ square feet for the DSM wall; a $\pm 15,149$ square foot temporary tieback easement to support the DSM wall during construction; a $\pm 5,605$ square foot sanitary sewer easement for service line relocation; and a $\pm 26,968$ square foot temporary construction easement to support the incidental construction activities from the subject property. These areas are shown on the attached Exhibit B. Kato Road will be depressed along the frontage of this property, but the road depression will not affect the function of the existing driveway.
3. **48835 Kato Road (Robson Homes and Castilleja Owners Association)** - This property is known as the Castilleja subdivision. It is located at the southeast quadrant of the project area, and it consists of 7.04 acres. It is approved for a 114-unit residential development, and the units are in various stages of completion, including vacant finished lots, units under construction, and finished homes with new owners. The subdivision also includes common areas including streets, open space, interior parks, and landscaping. Some parcels within this subdivision are under the ownership of the Castilleja Owners Association, while unsold lots remain in the ownership of the developer, Robson Homes.
 - a) **Property Interests Required From The Castilleja Owners Association:** The project requires a $\pm 5,245$ square foot temporary tieback easement, and a ± 192 square foot storm drain easement from the area occupied by Palo Verde Common, which is a private road owned by the Castilleja Owners Association. These areas are shown on the attached Exhibit. The tiebacks will be constructed deep in the ground at a minimum of six feet, and will angle to about twenty feet under Palo Verde Common. The tieback installation equipment will be placed within Kato Road inside the excavation area. The surface use of Palo Verde Common

during the installation of tiebacks will remain unaffected as the work will be done underground, and the residents will not be affected by the work.

- b) Property Interests Required From Robson Homes:** Home construction is ongoing at the Castilleja subdivision, and Robson Homes, the developer of the Castilleja subdivision, owns the unfinished portions of the subdivision including areas needed for the project. The project requires two public utility easements totaling $\pm 6,572$ square feet; two storm drain easements totaling 2,625 square feet; two sanitary sewer easements totaling 159 square feet; seven temporary tieback easements totaling 10,673 square feet; and four temporary construction easements totaling 247 square feet. These areas are shown on the attached Exhibits D-1 through D-7.

As previously mentioned, Robson Homes granted permission to the City and VTA to enter the property to perform advanced utility and storm drain relocation work. This work is being done in the areas where there is no home construction at this time, and will be completed in late October 2009. The advanced work not only benefits the project, but also eliminates the issues involved with having the project under construction at the same time as new home construction. The temporary impacted areas are primarily the front landscaped area along Kato Road, two private streets, common areas, and four vacant condominium lots.

- 4. Lot C of Tract 7693 (Warm Springs Owners Association)** - The subject property is a common area within the Montebello subdivision, which is located south of the Castilleja subdivision in the southeast quadrant of the project area. This subdivision consists of 18.3 gross acres, and is approved for the development of 342 detached single-family, townhouse, and condominium units. This subdivision is in various stages of completion. The project requires a small temporary construction easement ($\pm 1,341$ square feet) for the reconstruction and relocation of a storm drain. This area is shown on the attached Exhibit E. The interests being acquired are in the future common area of the subdivision, which is located next to a sound wall adjacent to the existing railroad tracks. Currently no new homes are being built at the lots adjacent to this common area. As with Robson Homes, advanced utility and storm drain relocation work is being done at the property with the intention to reduce the impacts of project construction on new home construction within the subdivision. The subject area is improved with open grid blocks for grass and the typical landscape items.

To secure the right-of-way necessary to meet the project construction schedule, staff requests that the City Council consider the adoption of a Resolution of Necessity authorizing the commencement of eminent domain proceedings for the noted properties.

THE PROPOSED RESOLUTION OF NECESSITY: Council adoption of a Resolution of Necessity, by four-fifths vote with the following findings, based on the evidence noted below, is required for the initiation of the proposed eminent domain action:

- 1. The public interest and necessity require the proposed project.** The need and necessity of the proposed project is consistent with the city's long term General Plan. Traffic study findings conducted prior to design of the project support the grade separation project. With the existing at-grade crossing, train traffic frequently blocks vehicular traffic, causing significant congestion

along Kato Road. The project as proposed will eliminate the existing at-grade railroad/street crossing at Kato Road, thus eradicating crossing closures, and train bells and whistles required at grade crossings. The project will result in improved traffic flow on Kato Road and nearby cross-streets, and alleviate traffic congestion in the City. Moreover, the project will facilitate an important mass transportation corridor for the region.

2. **The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.** City staff has been studying and working with VTA, CalTrans and ACTA on alternative design configurations for road grade separations as part of the effort to bring BART to Santa Clara County, including a railroad overpass or underpass. Because the BART tracks will be adjacent to existing UPRR tracks from Warm Springs south, the analysis included the treatment of the UPRR tracks. One such alternative considered leaving the street at-grade and depressing the rail tracks. However, this alternative is not viable. UPRR does not support this alternative, and the City has no authority to force UPRR to agree to depressed rails. Even if UPRR were to agree to the depressed rail alternative, the future BART extension tracks would also have to be depressed and the cost of clearance and operational requirements would have significant impacts to the City's operating right-of-way. Elevating the roadway over the rail tracks is also not a viable alternative, since this alternative requires a greater amount of right-of-way for the overpass as compared with the planned underpass, and would impact an even greater number of private property owners.

The final Environmental Impact Report (issued November 2004) for the BART extension to Milpitas, San Jose and Santa Clara project, determined that the BART alignment would continue south of East Warren Avenue at grade to the Milpitas yard, crossing over Kato Road, which will be reconstructed as an underpass.

The project as planned will be a benefit to the residents of the City and the region as a whole. It will relieve traffic congestion, improve automobile, bicycle and pedestrian safety, improve traffic mobility and regional connectivity, eliminate noise from train bell and whistles, while impacting only six private property owners and two public property owners.

3. **The property described in the resolution of necessity is necessary for the proposed project.** The properties to be acquired by eminent domain are located within the project area. As noted, based on the EIR and EIS for the Silicon Valley Rapid Transit (SVRT) project, numerous alternatives were studied, and it was determined that the project as planned provided the greatest benefits to the residents of the City and the region as a whole. The noted acquisitions are necessary for the project as planned. The completed project will improve traffic flow and mobility, enhance connectivity of the City of Fremont and the adjacent cities, reduce train noise at the crossing, and improve overall pedestrian and traffic safety in general. Although two private properties will be impacted by the loss of driveway, the City is required by State law to conform the parcels back to the best functional utility so that the property owners are not left with a landlocked or limited parcel.
4. **The offer required by Government Code Section 7267.2 has been made to all owners of record.** Staff has made the required written offers to all owners of record based on approved appraisals of the fair market value of the property and property interests necessary for the

project. The offers included a written statement containing detail sufficient to indicate the basis for the offer as required by Government Code Section 7267.2, and an informational pamphlet setting out the eminent domain process and the property owners' rights. Written Notices of the City's Intent to Pass a Resolution of Necessity, setting forth the date, time and location of the City Council meeting to consider adopting a Resolution of Necessity, were mailed to all owners of record on September 18, 2009.

FISCAL IMPACT: None. On November 18, 2008, the City Council authorized the City Manager to execute a Cooperative Agreement with the Santa Clara Valley Transportation Authority to implement the Kato Road Grade Separation Project. The Cooperative Agreement was signed by the City on November 24, 2008. Section I (Responsibilities of VTA), item 18, provides that VTA will pay for all costs associated with the right-of-way acquisitions, including all City costs associated with overhead expenses. The Cooperative Agreement was amended on May 19, 2009 to clarify the sections regarding payment and reimbursement of the City's costs of the right-of-way acquisitions and design coordination.

ENVIRONMENTAL REVIEW: The Kato Road Separation project is statutorily exempt from the California Environmental Quality Act because it will eliminate existing railroad grade crossings. A Notice of Exemption for the project was filed by the City with the Alameda County Clerk on November 19, 2008. Staff recommends that the City Council adopt the proposed Resolution of Necessity based on the above findings and information.

ENCLOSURES:

- [Draft Resolution](#)
- [Location Map](#)
- [Exhibits: Aerial Photos with Right of Way Acquisition Areas \(Exhibits A through E\)](#)

RECOMMENDATION:

1. Conduct a hearing
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity requires the acquisitions of the subject properties, and authorize the commencement of eminent domain proceedings.

8.1 Council Referrals

8.1.1 MAYOR WASSERMAN REFERRAL: Appointment of Denise Churchill to the Senior Citizens Commission

Appointment:

Advisory Body

Senior Citizens Commission

Appointee

Denise Churchill

Term Expires

December 31, 2011

ENCLOSURE: [Commission Application](#)

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
November 9, 2009	4:00 p.m.	Joint City Council/FUSD Board Meeting	Council Chambers	Live
November 10, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 17, 2009	5:00 p.m.	Work Session	Council Chambers	Live
November 17, 2009	7:00 p.m.	Regular City Council Meeting	Council Chambers	Live
November 24, 2009		Cancelled		
December 1, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 8, 2009	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 15, 2009	TBD	Work Session	Council Chambers	Live
December 15, 2009	7:00 p.m.	Regular City Council Meeting	Council Chambers	Live
December 16, 2009 – January 11, 2010		Council Recess		
January 5, 2010		Cancelled		
January 12, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 19, 2010	TBD	Work Session	Council Chambers	Live
January 26, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 2, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 16, 2010	TBD	Work Session	Council Chambers	Live
February 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live